IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7130 of 1987
with
SPECIAL CIVIL APPLICATION No 4008 of 1989
with
SPECIAL CIVIL APPLICATION No 4009 of 1989
with
SPECIAL CIVIL APPLICATION No 4010 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THE MEHSANA DISTRICT CENTRAL CO-OPERRATIVE BANK LIMITED
Versus
SHRRI DAHYABHAI KHUSHALBHAI PATEL

Appearance:
1. Special Civil Application No. 7130 of 1987 with
Special Civil Application No. 4008 of 1989 with
Special Civil Application No. 4009 of 1989 with
Special Civil Application No. 4010 of 1989
MR GM JOSHI for Petitioner No. 1
MR DJ BHATT for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/03/2003

COMMON ORAL JUDGEMENT

All these four Special Civil Applications contain the same issue and hence the same are disposed of by this common judgement.

2) As far as the Special Civil Application No.7130/1987 is concerned, the same is arising out of the order passed by the Labour Court in Application No.925/82 on 25-9-1985. As far as remaining three Special Civil Application Nos.4008, 4009 and 4010 all of 1989 are concerned, the same are arising out of the common judgement and order passed by the Labour Court in Application Nos. 904, 905 and 906/1982 on 19th October, 1984. Both these orders passed by the Labour Court have been confirmed by the Industrial Court vide its order and judgement dated 25-5-1987 and 26-4-1989 respectively and these orders and judgements are challenged by the petitioner, Co-operative bank, in the present writ petitions.

3) The case of the petitioner, co-operative bank, is that the four employees, who are respondents herein, have made applications before the Labour Court praying that they were to be treated as the employees of the bank and should be given the Grade of Supervisor and pay the difference and be given the benefits as given to the employees in that category from the date of their joining the service. So the main issue before the Labour Court was as to whether these employees could be treated as employees of the bank or not. In other words, the petitioner bank has raised the issue regarding their status and the jurisdiction of the Labour Court to decide the said issue. However, the said issue was decided against the petitioner bank by the Labour Court by holding that the Labour Court has jurisdiction to decide the said issue and the Labour Court has also held that the said employees would be treated as employees of the Co-operative bank. The another issue, which arose before the Labour Court as to from which date, the employes should be treated as employees of the bank, the Labour Court has held while passing the award on 19-10-1984 in Application Nos.904, 905 and 906/1982 that all the three applicants should be treated as the employees of the bank and they were to be put in the cadre of Supervisor and they would also be paid all the benefits as were paid to the other employees of the bank. As far as SCA No.7130/1987 is concerned, the Labour Court has passed

the order on 25-9-1985 wherein also similar directions were given. Both these orders passed by the Labour Court were confirmed by the Industrial Court and these orders of the Labour Court as confirmed by the Industrial Court were challenged in the present writ petitions before this Court.

4) At the time of admission and issuance of Rule in all these four matters, this Court has passed an order on 1st February, 1991, wherein it is observed that the record of application Nos.904, 905 and 906/1982 decided on 19th October, 1984, particularly, the operative part of the order is unsatisfactory. It was further observed that in the certified copy issued to the petitioner bank words " " do not appear, while in the copy produced before the Court, the words " have been added and the date put by the side of initial is of March 14, 1985. Because of this unsatisfactory state of record, this Court has called for the records and proceedings and after examination of the said original record, this Court found that in the original judgement and order, the words " " have been written and added, but there is only initial date 14-3-1985, did not appear to be there. Keeping this factor in mind, the Court has admitted the matter and given following directions.

(1) It would be open to the petitioner-bank to operate the directions given by the Labour Court from the date of the order of the Labour Court i.e.25-9-1985 in case of Special Civil Application No.7130 of 1987 (which arise out of Application No.925 of 1982 before the Labour Court). While in other three petitions (which arise out of Applications Nos.904, 905 and 906 of 1982) the date is October 19, 1984. As far as the amount of arrears prior to the date of order is concerned, the petitioner-bank will be at liberty to withhold the same on condition that in case the petitioner-bank loses in the petitions, the bank shall pay the amount withheld by it to the respective workmen with 15% interest. The amount of interest shall be calculated from the date of the order passed by the Labour Court.

2) The respondents-workmen shall file an undertaking before this Court to the effect that in case they lose in these petitions, they will return the amount received by them within a period of three months from the date of the final order that may be passed by this Court. In case they are in service at the time when the

petitions are finally decided, it will be open to the bank to recover the amount from the amount of terminal benefits or other amounts, which may be payable to them by the Bank. The workmen shall state in the undertaking that they shall not object to such recovery being effected by the petitioner bank. Such undertaking will be filed by them on or before February 22, 1991.

5) So far as Special Civil Application No.7130/1987 is concerned, this discrepancy was not there in the order passed by the Labour Court. However, the common order was passed by this Court at the time of admission of all the four writ petitions and, therefore, the similar treatment was given to this Special Civil Application.

6) Heard Mr.G.M.Joshi, learned advocate appearing for the petitioner and Mr.D.J. Bhatt, learned advocate appearing for respondents in all the four matters.

7) As far as the first three writ petitions, namely, 4008/1989, 4009/1989 and 4010/1989 are concerned, Mr.D.J. Bhatt has submitted that his clients are agreeable to the relief granted to them on the basis of interim order passed by this Court. In other words, they will not have any objection if the employees would be treated as employees of the bank from the date of award passed by the Labour Court and necessary benefits would be given to them. He has further submitted that all the employees are retired and hence they now forgo their claim to the effect that they should be given the benefit from the date of joining the bank. However, the notional seniority should be given to them from the date of joining so that the same would be beneficial to them in their retirement benefits. Mr.D.J. Bhatt has further submitted that considerable time has elapsed and all the employees have retired and moreover, the Labour Court, as well as the Industrial Court have decided the issue in favour of the employees and hence the petitioner-bank should not press the issue regarding the jurisdiction of the Labour Court, as well as the main contention that the employees were not the employees of the Bank. Mr.G.M.Joshi, learned advocate appearing for petitioner, submitted that though he had instructions not to press the point if the employees would agree that they would claim the benefit from the date of the award, however, he has submitted that the said issue is left to the discretion of the Court.

8) As far as the Special Civil Application No.7130/87 is concerned, it is found that there was no addition or interpolation of the words "

However, the fact still remains that the Labour Court has passed the order saying that they should be treated as the employees of the bank and hence it is urged by the bank that from the date of the award the respondent should be treated as the employee of the bank. Even otherwise, no different treatment can be given to the employee, who has to an employee and who did not agree. The Court is, therefore, of the view that respondent in Special Civil Application No.7130/87 would also get the benefit from the date of award and not from the date of application or from the date of joining.

9) In view of the above discussion and looking to the facts and circumstances of the case, as well as the submissions made and consensus arrived at between the parties, I am of the view that these petitions are allowed in this wise, that main contention of the bank that the respondents are not employees of the bank is rejected. However, the employees are entitled to the benefits from the date of the award and not from the date of the application or from the date of joining the Bank. It is further made clear that as far as the seniority of the employees is concerned, the same would be considered from the date of their joining to the bank.

10) On disposal of all these four petitions, since the Court has taken the view that the respondents are entitled to the benefits from the date of the award, the interim order passed by this Court shall stand confirmed. Hence, neither anything is to be paid to the respondents nor anything is to be recovered from them.

11) With these observations, all these four petitions are accordingly disposed of. Rule made absolute to the above extent with no order as to costs.

12) As the parties have agreed and this order is passed more or less on consensus basis, this should not be treated as a precedent.

(K.A.Puj, J.)
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